

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

TIMOTHY ALAN WELDY

§

v.

§

CIVIL ACTION NO. 6:18cv354

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ORDER OF ADMINISTRATIVE CLOSING

The Petitioner Timothy Weldy, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court referred the case to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Weldy was convicted of aggravated sexual assault of a child and sexual assault, receiving a sentence of 45 years in prison. He filed this federal habeas corpus petition some two weeks before his petition for discretionary review was refused, together with a motion asking that the petition be held in abeyance while he exhausted his state remedies. Weldy stated that he anticipates seeking state habeas corpus relief after his petition for discretionary review is decided, but that he is filing his federal petition “sooner rather than later” in order to ensure that he is within the limitations period.

The Director filed a response to the motion stating that she is not opposed to a stay, but asking that reasonable time limits be placed on Weldy’s return to state court. The Director observed that although Weldy’s petition for discretionary review was denied in July of 2018, Weldy had not sought state habeas corpus relief as of December 17, 2018.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion for stay and abeyance be granted, with the stipulation that Weldy must seek state habeas corpus relief by April 1, 2019.

No objections were filed to the Report, and the parties are therefore barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*). It is accordingly

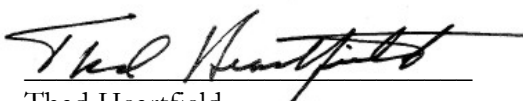
**ORDERED** that the Report of the Magistrate Judge (docket no. 11) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the Petitioner's motion for a stay (docket no. 3) is **GRANTED**. It is further **ORDERED** that the above-styled application for the writ of habeas corpus is **ADMINISTRATIVELY CLOSED** and placed on an inactive docket for administrative and statistical purposes. The case may be reopened at such time as Weldy or the Respondent notifies the Court that all state processes have been completed on the claims he wishes to present in federal court. It is further

**ORDERED** that Weldy shall seek state habeas corpus relief no later than April 1, 2019. Should he not do so, either he or the Respondent may notify the Court that Weldy's state habeas corpus petition was not filed by that date, at which time this federal habeas petition may be dismissed without prejudice for failure to prosecute or to obey an order of the Court, or adjudicated in its present state of partial exhaustion. The administrative closing of this federal habeas petition shall have no effect upon the substantive rights of any party. Finally, it is

**ORDERED** that any other motions which may be pending in this case are **DENIED**, subject to re-urging when the case is reopened.

**SIGNED** this the 21 day of February, 2019.

  
Thad Heartfield  
United States District Judge